



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Colonel Paul B. Olsen, P.E.
District Engineer
U.S. Army Corps of Engineers, Norfolk District
803 Front Street
Norfolk, Virginia 23510-1096

Dear Colonel Olsen:

On February 8, 2013, the U.S. Environmental Protection Agency (EPA) provided comments in response to the Public Notice issued for NAO-2010-00423/2012-01617, Berry Hill Mega Park (Park) near Danville, Pittsylvania County, Virginia. Our letter referenced Part IV, paragraph 3(a), of the 1992 Clean Water Act (CWA) Section 404(q) Memorandum of Agreement (MOA) between EPA and the Department of the Army. EPA's February 8, 2013 comments are incorporated herein by reference (copy enclosed).

EPA's February 8, 2013 comments were based on the Public Notice issued December 10, 2012 and supplemental documentation including the joint permit application (JPA) provided by the applicant on January 9, 2013. EPA's comments were provided consistent with Paragraph I.2 of the MOA and our responsibilities and authorities pursuant to Sections 404(b)(1), 404(c), and 404(q) of the Clean Water Act, Section 309 of the Clean Air Act, and the National Environmental Policy Act. We also provided for the Corps' consideration, information within the technical expertise of the EPA, including but not limited to information regarding water quality. Information related to water quality was provided pursuant to 33 U.S.C. § 320.4(d). EPA's review identified several areas of concern including the loss of valuable aquatic resources for a speculative enterprise which has no committed tenants; other available offsite alternatives; and inadequate characterization of the resources that will be directly and indirectly impacted. We were also concerned with an inadequately defined project purpose and need, which adversely affects our ability to fully analyze avoidance and minimization of impacts, and our ability to fully identify and consider practicable alternatives; lack of secondary and cumulative impacts analysis; and the proposed mitigation. Our letter also included technical comments, which we recommended be referred to and addressed by the applicant.

The Park is a proposed multiple phase mega site industrial development on approximately 3,500 acres of publicly-owned land near the North Carolina border. The City of Danville and Pittsylvania County are working jointly to develop the Park through the Dansville-Pittsylvania Regional Industrial



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Facility Authority (RIFA). To attract one or more future industrial clients, the applicant is proposing to construct the first phase of the Park. The Public Notice issued on December 10, 2012 pertained to proposed Phase 1 activities that include impacts to waters of the United States (WOUS) on Lots 3, 4, 5, 11 and 12 to provide pre-development infrastructure, transportation and pad site improvements. We have not been provided information identifying any anticipated or potential tenant or type of tenant or what the anticipated needs of any potential tenant would be. In light of the speculative nature of the proposal, we believe that it is difficult to assure that aquatic resources are avoided and minimized to the maximum extent practicable.

As proposed, this phase of the project will permanently impact a total of 36,135 linear feet of stream channel in addition to 20.38 acres of wetlands and 0.69 acres of open water. The proposed impacts are within important headwater stream and wetland systems of Trotters Creek, McGuff Creek and an unnamed tributary to the Dan River. Headwater streams are ecologically important in effecting downstream water quality, including larger streams that may provide important drinking water to communities, and conservation of species, including some endangered aquatic species. Headwater streams' hydrological connectivity and resulting flow of water is the primary mechanism providing the physical connections within the stream network and between the network and the surrounding landscape, allowing for the transformation, storage, and export of material to downstream waters. Headwater streams provide important functions including natural flood control, groundwater recharge and trap sediments and pollutants. In addition, they are an important source of organic matter and nutrients for downstream systems and are a vital source of, and help maintain downstream biological diversity. Impacts to headwater streams, as proposed for this project, will affect the existing hydrologic and biogeochemical processes that are necessary to maintain the health and vitality of downstream systems.

While the applicant has not provided updated biological, chemical and physical assessment data for the stream resources, data from Virginia's Department of Environmental Quality sampling program for these streams indicate that Trotter's Creek and McGuff Creek are meeting aquatic life use designation with suboptimal habitat (based on EPA's Rapid Bioassessment Protocols). These streams were last sampled in 2008. It is essential to have current baseline data which accurately reflects the quality of the resources proposed to be impacted. This information will support the decision process and enhance our understanding of what functions and services will be lost in the watershed as a result of the proposed project as well as assist in ensuring that the proposed compensation sufficiently offsets those impacts.

The proposed project is located within the Upper Dan River watershed. The Dan River drains into the Roanoke River. Both rivers are interstate waters and all these waters are tributaries to the Albemarle Sound. The Albemarle-Pamlico Sound is the second largest estuary in the United States and the Roanoke River provides over half of the fresh water to the Albemarle Sound. The Roanoke River is considered one of the most biologically diverse rivers in the Mid-Atlantic as it is home to more than 214 bird species, 119 fish species and to six threatened and endangered aquatic species. In 2011, American Rivers named the Roanoke River the third most endangered river in the United States. The Sound was named an estuary of national significance by Congress in 1987. It is home to more than 75 fish and shellfish species and it supports billions of dollars in economic activity and ecosystem services to the Region. Given the importance of intact headwaters systems to downstream ecological health, there remains concern that this proposed project, in addition to other similar proposed large scale projects, will have an adverse effect on the Roanoke River and the Sound watersheds.

Additional information has not been provided to address the concerns raised in our February 8, 2013 letter. EPA continues to be concerned that this project does not satisfy the CWA Section 404(b)(1) Guidelines (Guidelines), 40 C.F.R. Part 230, which establish the substantive environmental criteria upon which Section 404 permit decisions are based. Additional avoidance and minimization efforts should be considered under the Guidelines to reduce the adverse impacts of this proposal. The anticipated impacts are likely to cause or contribute to significant degradation of waters of the United States, and the direct and cumulative impacts of this project, when combined with other past and reasonably foreseeable future projects, will further contribute to significant watershed degradation that will not be sufficiently or effectively compensated for by the proposed mitigation.

To ensure a thorough evaluation of a full range of alternatives to identify the least environmentally damaging practicable alternative, it is important for us to continue to coordinate closely in the review of this and other similar projects. EPA recommends that you consider developing a programmatic Environmental Impact Statement which encompasses all the potential or proposed Tobacco Indemnity funded projects within the Commonwealth. EPA remains committed to working with you and your staff to achieve a resolution which supports regional development and ensures protection of environmental resources.

In summary, EPA has great concern regarding the stream and wetland impacts of this proposal. We are also concerned over the speculative nature and resultant inadequate consideration of alternatives. Therefore, consistent with Part IV, paragraph 3(b), of the 1992 CWA 404(q) MOA between EPA and the Department of the Army, without additional information EPA believes that the project, as described in the information provided to EPA, will result in substantial and unacceptable impacts to aquatic resources of national importance.

We stand ready to work with you and the applicant on these issues to identify an appropriate path forward that meets the goals and objectives of the applicant, while ensuring protection of environmental resources.

If you have any questions, please do not hesitate to contact me or have your staff contact Mr. John R. Pomponio, Director of EPA Region III's Environmental Assessment & Innovation Division at 215-814-2702.

Sincerely,

Shawn M. Garvin
Regional Administrator

Enclosure